

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, orders or Registrar's	Court's or Judge's orders.
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CRIMINAL APPLICATION NO. 27 OF 2015
WITH APPLN/234/2015 IN APPLN/27/2015

TABRZKHAN S/O RAHEMANKHAN DURRANI AND
ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicants : Mr. Salunke V.D.
APP for Respondent: Mr. A. V. Deshmukh.
Advocate to assist APP: Mr. S. J. Salunke.

CORAM: T. V. NALAWADE, J.
DATED: 25th FEBRUARY, 2015.

PER COURT:

1. The application is filed for relief of bail. Both the sides are heard. This Court has perused the papers of investigation.
2. Learned A.P.P. produced record of confidential report also created by Police machinery right from year 1982.
3. During arguments, learned counsel for the Applicants submitted that before advancing arguments by him, this Court expressed that the Court will be

imposing conditions if the court is granting bail. The learned counsel for the Applicant made submission that he was not at all heard and it was not proper on the part of the Court to say that the Court will be imposing conditions. This submission, circumstance is required to be noted as there are many circumstances against the applicants which this Court needs to quote in the present proceeding.

4. From the record of investigation of the crime it can be said that this Court would not have taken the matter seriously and this Court would have immediately granted bail to the applicants particularly in view of the nature of injuries sustained by the other side. But the Court noticed many serious things against the Applicants. Applicant No.1 Tabrez Khan is a nephew of one Shri Babajani Durrani @ Abdullah and applicant No.2 is a son of said Babajani Durrani @ Abdullah. Shri Babajani Durrani @ Abdullah was M.L.A. of Pathri constituency for many years and at present he is M.L.C. At present he is from political party N.C.P. and in the past he was representing Congress Party. It was brought to the notice of this Court that the applicants, who have given their ages as 35 and 28 years, were kept in Government

Hospital by creating a record that they were sick and they were not kept in jail for most of the days. When the matter was brought to the notice of this Court, Court saw that record and it was found that they were in the hospital for 45 days during 2nd December, 2014 to 21st January, 2015. They were arrested on 2nd December, 2014. Police custody remand of two days was granted against them and they were kept in jail for about 5 days. When this Court made order after noticing the circumstance on 21st January, 2015 they were immediately shifted from civil hospital to the jail and since then they are in jail. There was sufficient material for this Court to form opinion that Shri Babajani Durrani @ Abdullah and the present applicants are influential persons and the concerned had acted under their influence. Then orders were made by this Court on 5th February, 2015 and 20th February, 2015. In view of the directions given by this Court the State Government formed committee and started the inquiry of the concerned who worked under the influence of the applicant and Shri Babajani Durrani @ Abdullah and helped them to remain in civil hospital.

5. For the perusal of this Court, some antecedents of

the applicant were shown and also the confidential record in respect of Shri Babajani Durrani @ Abdullah was shown. There are allegations against them that they are using their political influence against all Government Officials and Government Officers were feeling that there was no other alternate before them then to work as per instructions which Shri Babajani Durrani @ Abdullah and present applicants were giving. They used to virtually assault the public servants if the public servants were not obeying their orders. There are allegations that they used their influence for transferring even Deputy Superintendent of Police.

6. As against Junaid Khan, Applicant No.2, from the year 2010 as many as 8 crimes are registered. Even if it is presumed that some incidents took place due to the political activities, the fact remains that they were never obeying the law. They were pressurising public servants and they were not hesitating in assaulting them for keeping them under pressure. As against applicant No.1 Tabrez Khan at-least 4 crimes are registered which are similar in nature and involve the offences committed against public servants. Submissions made show that Junaid Khan, son of Shri Babajani Durrani @ Abdullah is

working as President of Municipal Council Pathiri and Applicant No.1 Tarbez Khan is Councilor and he is also working as group leader of his political party N.C.P. in the municipal council. Shri Babajani Durrani @ Abdullah is M.L.C. at present. The incident took place at the time of elections to Assembly of this State. These circumstances need to be kept in mind even if this Court forms opinion that bail needs to be granted to them.

7. The crime in the present case came to be registered on 15th October, 2014 for offences punishable under sections 307, 452, 149 etc. of I.P.C. and also section 294 I.P.C. and also under some sections of Criminal Law Amendment Act. Complainant, one Prabhakar Shinde has made allegations that on that day at 17.45 hours when he was present in his house, he heard shouting of persons and when he came out he noticed that in the courtyard of his house his cousin and son were present and he saw that Shri Babajani Durrani @ Abdullah, Junaid Durrani, Tabrez Durrani and their associates had come to his house with 100 to 125 persons. Shri Babajani Durrani @ Abdullah was holding a stick. Junaid Durrani, Tabrez Durrani were holding hockey sticks and their associates were holding sticks

and hockey sticks. They picked up quarrel and started asking the complainant as to why he was canvassing for political party, Congress. They gave threat of life and they started giving abuses. Then, Shri Babajani Durrani @ Abdullah and present two applicants instigated the people who had gathered there to hold the complainant and to finish him. At the relevant time, some police officers of Pathri Police Station were present there and they tried to prevent these persons and their associates from entering the house of the complainant but assault was made on Umesh Barahate, Police Personnel. Police Personnel were prevented from interfering. Then, these applicants and Shri Babajani Durrani @ Abdullah and his associates used force and entered the house of complainant and they assaulted complainant by using hockey stick. They assaulted son of the complainant, Parikshit when he tried to intervene. They caused damage to his house. Police could not dare to interfere and prevent these persons from committing such offences.

8. It appears that accused Shri Babajani Durrani @ Abdullah was arrested on next day and he was produced before the J.M.F.C. In the police report it was informed

that the crime was registered for offence punishable under section 307 of I.P.C. also. The submissions made and the record show that the learned J.M.F.C. discussed the material and formed opinion that section 307 I.P.C. is not at all applicable in this case. Such exercise is not at all expected from J.M.F.C. Only under special circumstances mentioned in section 437 of Cr.P.C. the J.M.F.C. can grant bail when the offence is punishable with life imprisonment or death. Special circumstances were not considered but the learned J.M.F.C. considered few affidavits filed for Shri Babajani Durrani @ Abdullah. These affidavits were to the effect that no serious injury was caused. On the same day in case registered under section 307 I.P.C. bail was granted to Shri Babajani Durrani @ Abdullah. This circumstances is mentioned in the present proceeding only to show the influence of Shri Babajani Durrani @ Abdullah and it can be said that he can influence anybody.

9. In the present matter, the injury certificates in respect of the three injured are considered by this Court. Parikshit sustained some C.L.Ws. which are described as simple. The complainant Prabhakar sustained two injuries and one injury was to the head. CT scan was

done. However, as per the record these injuries are described as simple injuries. There are allegations that there was an attempt on the life of complainant which this court has already discussed.

10. In view of the aforesaid circumstances, this Court expressed that the Court may grant bail to the applicants but will be imposing some conditions like preventing the applicants from entering Pathri. When this Court asked learned counsel for the Applicant about this opinion formed by the Court, the learned counsel submitted that he is not at all heard and before hearing him the Court has expressed such thing. The relief of bail is a discretionary relief. Even after considering the aforesaid circumstances this Court had expressed that this Court may grant bail but the learned counsel for the applicant expressed like above. This Court then said that the learned counsel may argue on merits. The learned counsel for the applicants submitted that the Applicant Junaid is the President of local body, municipal council, applicant No.1 Tabrez is a councilor and group leader of N.C.P. also in the municipal council and so such condition will be preventing them from discharging their duties.

11. The applicants are in politics. Considering their past conduct and aforesaid circumstances, this Court has formed opinion that they need to be prevented from entering Pathri town. Learned A.P.P. submitted that they need to be prevented from entering Pathri Tahsil. This Court is not feeling that there is necessity of such condition. However, if something happens in future the Court can consider such submission also. When a person is in politics he also needs to think about public interest. The Court is not expected to consider the desire of the applicant who is a President of Municipal Council that he wants to work as a President and so such conditions should not be imposed. Interest of the society as a whole needs to be considered by the Court. If the applicants really think of the interest of the society, they can take appropriate steps which are necessary in public interest. This Court has formed definite opinion that they need to be prevented from entering Pathri town and only that condition can protect every body from Pathri, including the public servants.

12. When this Court was dictating the order, the learned A.P.P. produced before this Court the inquiry report of the committee constituted by the Government.

Learned A.P.P. has no objection to mention the opinion formed by the inquiry committee. The inquiry committee has found that medical officers involved are prima facie responsible for creation of false favourable record, and they did favour to the applicants for keeping them in civil hospital. It is misconduct. The departmental inquiry is suggested by the inquiry committee against those officers of the civil hospital.

13. In view of the aforesaid discussion, the application is allowed subject to some conditions. The applicants are to be released on bail on their furnishing P.R. and S.B. of Rs.30,000/- with one solvent surety of the like amount, by each of them. They are not to tamper with the prosecution witnesses. They are not to commit similar offence. They are not to enter Pathri Town till the disposal of the case which may be filed against them. They can enter Pathri, to attend the cases filed against them in Pathri Court. Before entering, they need to first go to the concerned Police Station and they need to inform that they were entering Pathri for attending court cases. If they do not follow the procedure, the State is to take appropriate steps for commission of the breach of conditions imposed by this Court.

14. Criminal Application No. 234 of 2015 seeking permission to assist learned A.P.P. is allowed and disposed of.

[T. V. NALAWADE, J.]

Dt.25/02/2015
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